IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 16310 of 2007(N)

PETITIONER:

ZACHARIAH GEORGE,
DEPUTY SUPERINTENDENT OF POLICE,
SPECIAL BRANCH, CID, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY, HOME (A) DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT, TRIVANDRUM.

3. DIRECTOR GENERAL OF POLICE, TRIVANDRUM.

4. M.B. VIJAYAN, DYSP,
DCRB, KOZHIKODE RURAL.

5. ANIL P.K., DYSP,
NARCOTIC CELL, KOTTAYAM.

BY ADV. SRI. NANDAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI , J

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W.P.(C) NO. 16310 OF 2007

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Dated this the 5th day of September, 2007.

JUDGMENT

The petitioner approached this Court challenging Ext.P13 order issued by the Government on 19.05.2007, inter alia, by which, he was transferred from SBCID, Ernakulam and posted as DYSP, DCRB Wynad. Ext.P14 produced along with the writ petition was a complaint which the petitioner had preferred before the Director General of Police requesting that he may either be permitted to continue at SBCID, Ernakulam city or in the existing vacancy of DYSP, Vigilance, Plantation Corporation Kerala, Kottyam.

2. By an interim order dated 02.07.2007 this Court directed the 3rd respondent to forward Ext.P14 to the 2nd respondent within one week from the date of production of the order. Government was directed to pass orders on Ext.P14, inter alia, after affording an opportunity of being heard to the petitioner.

3. Admittedly, orders have been passed on Ext.P14. Though the petitioner has not produced the same, it has been made available for perusal by the Government Pleader. By Order No. GO(RT) 2249/07/Home dated 20.08.2007 the petitioner was posted as Chief

Instructor, Kerala Police Accademy in the existing vacancy. The said order is in modification of Ext.P13 order. The directions issued by this Court on 02.07.2007 was duly complied with. The order of the Government dated 20.08.2007 issued to him was also shown to him. Therefore, as on date, the petitioner has been given transfer and a posting as the Chief Instructor, Kerala Police Accademy.

4. The learned counsel for the petitioner contends that Ext.P13 order of transfer is bad and and it is liable to be set aside. The order was not on recommendation by the committee constituted under the Kerala Police (Amendment) Ordinance 2007. Reference in this regard is made to Section 4 (a), which inter alia contemplates that the Government may ensure a normal tenure of two years from the date of assuming charge of a post, to the Director General of Police and to all officers holding charge of Police Stations, Police Circles, Police Sub-Divisions, Police Districts, Police Ranges and Police Zones. The contention is that in passing Ext.P13 order of transfer, this aspect has not been borne in mind by the Government.

5. I have heard the learned counsel for the petitioner as also the learned Government Pleader. I am not impressed with the arguments regarding violation of the provisions of the ordinance. Firstly clause 4A

cannot be construed as diluting the powers of the Government to dispense with the normal tenure of 2 years in the case of those police officers who are comprehended by the said clause, by the very nature of duties which are expected to be carried out by them. The primary job of a police officer is to manage the law and order and therefore, if the Government feels that there are circumstances which might require abridgment of the period mentioned in Clause 4 A, it is open to the Government to do that . Of course the circumstances which are mentioned in sub clause 8 (2)(f) of sub section 2 of Section 4 will have to be kept in mind.

6. There is yet another reason why the challenge against Ext.P13 order may not be countenanced at this stage. Firstly Ext.P13 itself was reviewed at the instance of the petitioner by the Government and therefore the petitioner has now been posted as Chief Instructor of Kerala Police Academy. Having challenged Ext.P13 and having invited an order requiring Government to reconsider the request made by him on Ext.P14, it is not open to the petitioner to continue to maintain that Ext.P13 is bad and should be interfered with. The petitioner now stands transferred and posted to the Kerala Police Academy.

7. The learned Government Pleader further submitted that apart from the Director General of Police, an officer who holds charge of Police station may prima facie, get the benefit of being retained in the place of posting for the period of two years. Significantly, under Ext.P13 order the petitioner was posted to the Office of the SBCID, Ernakulam. The petitioner who is the Deputy Superintendent of Police cannot claim to be in charge of Circle, District station etc. The transfers which were effected prior to Ext.P13 obviously cannot be comprehended by the ordinance which came into force on 07.04.2007.

8. In all, I am of the view that the action taken by the Government either under Ext.P13 order or as per order dated 20.08.2007 does not require an interference at the hands of this Court. I have indicated my view in relation to the order dated 20.08.2007 only because the order seems to have been issued pursuant to the interim order passed by this Court in the writ petition and not because the same has been challenged in the writ petition. Be that as it may, I do not find any grounds to interfere with the transfer and posting given to the petitioner. It is the further claim of the petitioner that the service for the period from 08.08.2006 to 30.11.2006 has not been regularised. The learned Government

Pleader makes available a copy of G.O(Rt) No. 1562/07/Home dated 12.06.2007 whereby the government has regularised as duty, the period of service from 08.08.2006 to 30.11.2006 under Note 4 to Rule 12 of Part I KSR. No grievance in that regard survives pursuant to the order dated 12.06.2007. Steps will be taken by the respondent to disburse the salary to the petitioner for the period without any delay, at any rate, within a period of one month from the date of receipt of a copy of this judgment. Subject to the above observation the writ petition is dismissed.

V. GIRI, JUDGE.

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